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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1932.

No. 643

CHARLES YOUNG, APPELLANT,

vs.

ANTHONY MASCI.

APPEAL FROM THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY.

STATEMENT OF JURISDICTION.

The basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to review the judgment of the New Jersey Court of Errors and Appeals in this cause is:

1. Such Court is the highest court of the State of New Jersey in which a decision in this suit could be had.

2. In this suit there is drawn in question the validity of a statute of the State of New York in its application to this case, on the ground of its being repugnant to the Constitution of the United States Sec. 237(*a*) Jud. Code as amended Feb. 13, 1925, Chap. 229, 43 Stat. 936):

> "SEC. 237(*a*). A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity; or where is drawn in question the validity of a statute of any State on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error."

The New York Statute in question is particularly repugnant to Section 10 of Article I of the Constitution of the United States, and repugnant to the provisions of Section 1 of the 14th Amendment to such Constitution, and the decision of the New Jersey Court of Errors and Appeals is in favor of its validity. Such statute is part of Section 59, Chapter 54 of the Laws of 1929 of the State of New York, and is as follows:

> "Every owner of a motor vehicle or motorcycle operated upon a public highway shall be liable and responsible for death or injuries to person or property resulting from negligence in the operation of such motor vehicle or motorcycle in the business of such owner or otherwise by any person legally using or operating the

same with the permission express or implied of said owner." (Laws N. Y. 1929, Vol. 1, p. 82. Cahill's Cons. L. N. Y. 1930, p. 2573.)

3. Date of judgment sought to be reviewed—October 27, 1932.

4. Application for appeal presented on January 5, 1933.

Nature of the Case.

One Masci, a citizen of New York, sued the appellant, Charles Young, a citizen of New Jersey in the New Jersey Supreme Court, Passaic County. For cause of action Masci, by amended complaint, pleaded the New York Statute above quoted, also averring that he had been injured in the City and State of New York through the negligent operation by one Balbino of an automobile owned by the Appellant, Charles Young. Appellant, Young, answered the amended complaint, admitting ownership of the automobile, averring that he never had had any knowledge of the law of New York in question, that he had loaned the automobile to Balbino in New Jersey, was himself a citizen and resident of New Jersey, had had no knowledge that Balbino intended to drive the automobile into New York, that it was not being driven by the Appellant, nor for him, nor in or about his business, nor by anyone for whose conduct he was responsible, and that he was not in the State of New York at the time the automobile was in that State. The question of the repugnancy of the New York Statute to the Constitution of the United States was raised by motion to strike out the amended complaint, by the answer, by objection to admission

of the statute in evidence at the trial, by motion for non-suit at the conclusion of plaintiff's evidence, by motion for directed verdict at the conclusion of all the evidence, and by exceptions to the court's charge to the jury. The trial court overruled the motion to strike out the complaint, the motions for non-suit and directed verdict, the objection to the admission of the statute in evidence, held that the New York Statute as applied to the case is not repugnant to any part of the Constitution of the United States, charged the jury that the New York Statute, as above quoted, operated extra-territorially over the Appellant, Young, and that he, being the owner of the car, was liable in any event, provided only the accident was occasioned by the negligence of the driver in the State of New York. A verdict for $14,000 was returned, remittitur of $4,000 and judgment rendered against Appellant, Young, for $10,000. On appeal to the New Jersey Court of Errors and Appeals the validity of the New York Statute was sustained, and the judgment affirmed.

Cases Sustaining Jurisdiction.

"A decision of a state court applying and enforcing a state statute of general scope against a particular transaction, as to which there was a distinct and timely insistence that if so applied the statute was void as in violation of the Federal Constitution, necessarily affirms the validity of the statute as so enacted, and the judgment is reviewable on writ of error under paragraph 237 of the Judicial Code."

Fiske v. *Kansas*, 274 U. S. 380.

Dahnke-Walker Milling Co. v. *Bondurant*, 257 U. S. 282.

Appeal Is Now the Correct Procedure.

Act of Congress of January 31, 1928 (Chap. 14, 45 Stat. 54):

> "Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, That the writ of error in cases, civil and criminal is abolished. All relief which heretofore could be obtained by writ of error shall hereafter be obtained by appeal."

Nashville, C. & St. L. R. Co. v. *White*, 278 U. S. 456.

Great Northern Ry. Co. v. *State of Minnesota*, 278 U. S. 503.

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